



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OREGON 97232-1274
August 6, 2013

Dan Opalski, Director
Office of Water and Watersheds
U.S. EPA, Region 10
1200 6th Avenue
Seattle, Washington 98101

Dear Mr. Opalski:

Re: Notice of concern regarding pre-public review draft of Energy Facility Site Evaluation Council (EFSEC)/Washington Department of Ecology (WDOE)'s proposed Columbia Generating Station (CGS) National Pollutant Discharge Elimination System (NPDES) Permit No. WA-002515-1 and accompanying Fact Sheet

We would like to draw your attention to the above referenced permit action by Washington's Energy Facility Site Evaluation Council and Department of Ecology (EFSEC/WDOE). This letter serves as National Marine Fisheries Services (NMFS) notice of concern that the proposed permit action would have a more than minor detrimental effect on Federally-listed species as per Memorandum of Agreement (MOA) Section IX(A)(3) and to update you on developments since your letter to EFSEC/WDOE concerning this permit of February 15, 2013. At issue, and of particular concern to NMFS, is EFSEC/WDOE's determination that the cooling water intake screens are the best technology available (BTA) for minimizing adverse environmental impact, especially for salmon and steelhead species protected by the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). As proposed, this permit would harm these anadromous salmonids, resulting in prohibited take under the ESA. Furthermore, it would allow reduction of the conservation value of essential fish habitat for Chinook salmon, contrary to the requirements of the Magnuson Act. While NMFS brought its concerns regarding this intake system to WDOE/EFSEC's attention, consistent with your letter to them, the permit provides no new requirements for this system to protect juvenile salmonids. We have attached our comments on the draft permit for your consideration.

Should EFSEC/WDOE continue to propose this permit/fact sheet as currently written, we would request that U.S. Environmental Protection Agency (EPA) formally object as per the January 2001 MOA, Section IX(A)(6) and, if necessary, take over NPDES permitting for this project. This would then necessitate an ESA § 7(a)(2) consultation with NMFS on any permit renewal action.

Through a series of meetings and correspondence, NMFS has alerted EFSEC/WDOE to our concern. Yet, the draft fact sheet attached to that permit determined that the cooling water intake system was the BTA based on WDOE staff's professional judgment. The permit itself is silent on the cooling water intake system and does not explicitly implement the requirements of 33 U.S.C § 1326(b) and its implementing regulations, 40 C.F.R. 125 Subpart J. We have attached copies of two memos from Bryan Nordlund, P.E., NMFS' expert in fish passage engineering, presenting his review of the CGS cooling water intake screens for fish protections, supporting NMFS' objections to EFSEC/WDOE's determination that the intake screening system is BTA.



Consistent with your letter of February 15, 2012, the NMFS' guidelines for intake structures are not inconsistent with the EPA's regulations for cooling water intake structures. NMFS criteria to protect juvenile salmon at such water intakes are scientifically based and regionally accepted, strongly indicating that they represent the best technology available. In fact, these criteria are identical to those adopted by the Washington Department of Fish and Wildlife (WDFW), making EFSEC/WDOE's treatment of this issue inconsistent with WDFW's criteria as well.

EPA has authority over EFSEC/WDOE's NPDES actions through 40 CFR § 123.44(c). We respectfully request that you invoke this authority as needed with regard to this permit action.

Should you need additional information to support your action on this matter, please contact Richard Domingue (503-231-6858) or richard.domingue@noaa.gov of our staff. Thank you for your consideration of our request.

Sincerely,



Bruce Suzumoto
Assistant Regional Administrator
Hydro Division

Attachments (4)

cc: Dennis Logan, NRC
Jim La Spina, EFSEC
Bill Moore, WDOE
Shannon Khounnala, Energy Northwest